

Tauranga City Council

Code of Conduct Complaint Investigation

25 September 2020

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1. Introduction

Tauranga City Council (TCC) have received a complaint from Councillor (Cr) Andrew Hollis ('the Complainant') concerning the alleged actions and behaviours of Cr Larry Baldock ('the Respondent') in relation to a breach of the TCC Code of Conduct (COC).

The complaint dated 22 August 2020 has been subject to a preliminary assessment.

The complaint was assessed as material and is the subject of this report.

2. The Complaint

The allegations raised in the complaint from Cr Hollis dated 22 August 2020 (attached as appendix a) constitute the scope of this Investigation.

The complaint alleged that Cr Larry Baldock has breached the Council's Code of Conduct. (attached as appendix b)

I wish to make a Code of Conduct Complaint against Cr. Baldock regarding his actions in publicly disrespecting and perhaps even defaming my integrity as an elected member.

The allegation arises from comments made by Cr Larry Baldock on Facebook in relation to his view that one Councillor had deliberately deleted text messages to avoid scrutiny during an Official Information Act request process. Cr Baldock confirmed to media that he was referring to CR Hollis.

"Baldock posted on Facebook this morning that he was making inquiries with the Offices of the Ombudsman and Chief Archivist in regard to what, in his opinion, seemed to be a "deliberate attempt by one Councillor to avoid scrutiny by deleting all txts from his phone prior to handing it in to staff."

"Baldock confirmed to the Bay of Plenty Times he was referring to Hollis". (Article by Samantha Motion, BOP Times 5 August 2020)

The aim is to investigate the allegations and provide a report for the TCC on the seriousness of the breach, if any.

3. Background to the Complaint

A request was made for information relating to the emails and text messages of TCC councillors under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

This related to a series of separate but related LGOIMA requests made by the media and private individuals for email and text communications between elected members in relation to the matters of the requisition letters for the removal of the Deputy Mayor and related topics.

The search criteria was established and councillors provided their TCC issued cell phones for review.

Subsequently the information sought under the LGOMIA requests was released, and within this information it was identified that two Councillors returned a nil result for text messages fitting the search criteria. This included Cr Hollis.

However text messages received by other Councillors and identified as coming from Cr Hollis were released as part of the LGOMIA process.

This anomaly is at the centre of Cr Baldock's enquiry, he has questioned, why is it that text messages received from Cr Hollis by other councillors have not been located on Cr Hollis's cell phone using the same search criteria.

4. Interviews

Cr Andrew Hollis (the Complainant)

AH Andrew Hollis - CG Campbell Gourlay

A summary of the interview with Cr Hollis. (attached as [appendix c](#))

Cr Hollis, as the complainant, was interviewed to establish the context of his Code of Conduct complaint.

He provided a background to his complaint and events leading up to him making an official complaint about Cr Baldock.

AH Sure, I mean I can definitely do that. The substantial, the issue is around LGOIMA that was released to public some weeks ago, back in August or late July where Councillors on all of our emails and text messages were released to the public in a thousand page document or so. Inside that bundle were all of the texts relating to certain topics and those were released and on my phone it was requested, I hadn't used it for texting anything of any consequence, relating to well any of those matters at all. In fact, most of the comments that I made were by email or by phone call where we discussed things or actually at, I guess you'd call them informal coffee meetings or things like that, so verbally rather than written documentation.

After they were released there was two Councillors who had clean, that was in quotes, phones or no messages that matched the search criteria from the LGOIMA and from that Councillor Baldock threw up an assumption on Facebook that I had deleted my texts. Now the issue with that is that it doesn't matter what content particularly is inside the texts or the emails or whether there is or there isn't and we could say whatever we like in those and its not defamatory, there's no cause for defamation from a text that has been released from your thoughts or writings that has been released without you doing so deliberately into the wild, you throwing it out publicly is something different.

Then, the issue then became that Councillor Baldock used Facebook as a platform to put his opinions on what had happened and that was when he suggested, well didn't even suggest, he stated that I had deleted texts. What that triggered was a Facebook thread or war where I was called a liar, that I had cheated the system, that I had deliberately misled, that I'd done a whole lot of things that I hadn't done and I felt that it was probably worthy of having a chat to Councillor Baldock to get those things brought down or resolved. Of course then the media got hold of it and asked Councillor Baldock who he meant and he made it very clear who he meant, he labelled me in the article, that that was who he meant and that he was getting the Ombudsman and Attorney-General to investigate further, the deletion of texts and I then asked him again to remove and retract which he declined and also declined to sit and even talk

about it. And it was at that point we were also in the middle of this LGOIMA thing, so I gave him a week to think about it and then I just said to Marty that I have to do something about it and this was why it was a Code of Conduct, it's like it's in the public now and it's not, it's just not a reasonable way to discuss things between Councillors, it's just not.

Cr Hollis explained that he has a personal cell phone and his understanding of what his obligations are under the LGOMIA framework.

- CG *And so and you talked about the phone that you submitted for examination for part of this LGOIMA process, so do you have a Council—?*
- AH *I have a Council phone and I've got a private phone. If I'm texting individually to a Councillor who asks me a question I will text them back depending on what it's about. Typically if it's about a work related thing, like an example might be, Elizabeth Street, like, 'What's your thoughts on that?' I'll ring and have a chat. If it's, 'What are you doing on the weekend?' I'll ping a text and there's obviously a range inside there. There is some crossover between Councillor and private and that was asked for off my private phone. Sam Motion from Bay of Plenty Times requested specifically my texts according to five criteria so I went through my private phone and checked my texts against the criteria asked and there was nothing in there according to what was asked.*
- CG *Okay.*
- AH *And I also checked a few other things, for example the request asked for Deputy Mayor and I looked for Tina and Salisbury and DM as well just to see if, you know, to stretch it around that second LGOIMA, but there was nothing to report from that.*
- CG *And just for clarity, so your personal phone I would imagine is not covered by LGOIMA?*
- AH *Only insofar as Council activity that is conducted on it.*
- CG *On it, right, okay.*
- AH *So, if I conduct Council activity using this phone, then that is LGOIMA.*
- AH *Like for example you could ask me when did I call the Mayor on this phone and I could search my phone records, it's got, you know, records of— and I could tell you I called him on such a such a day on such a such time and from what I recall it was about. But it's up to me to do this, it's not up to anyone to search it.*
- CG *No, whereas the Council provided phone...*
- AH *Is searchable.*
- CG *...is searchable and handed over, okay.*
- AH *Mhmm.*
- CG *And so, just to clarify, have you deleted any texts in relation to...*
- AH *No.*
- CG *...any of the stuff, based on the criteria?*
- AH *No I haven't, I mean I've had some pretty reprehensible stuff sent to me which I don't typically delete. I will delete Facebook threads if they get heated beyond sensibility and that would be about the only thing on my Council related stuff that I delete. And that's mainly because that's the only option on Facebook to shut a thread down properly.*
- CG *Is to delete it? Okay.*

AH *Is to delete the initial comment.*

Cr Hollis confirmed how he initially became aware of the Facebook posts by Cr Baldock, and why he became concerned about their content.

CG *Yes 'cause I'm just wondering, so how it first came to your attention, did you—?*

AH *It was, this was sent to me.*

CG *It was sent to you by someone else?*

AH *Yeah. By members of the public.*

CG *Right.*

AH *I mean I've had others since, I've got another one here from someone that responded but it created a thread.*

CG *A thread, right.*

AH *But it was more about – like a Facebook thing like I've just said is easy to get rid of.*

CG *Yeah, so this is and looking at the second, this is the second screenshot you sent through with your complaint, identified at the top it's got Larry Baldock but then there is a heading with [REDACTED]...*

AH *Mmhmm*

CG *...and that [REDACTED] says that's a breach of the Public Records Act 2005 not to mention misconduct and goes on there, next heading is [REDACTED]*

AH *Yeah that's, yeah that one – yeah it was the [REDACTED] one that started me thinking this has gone a little further than it, than petty name calling.*

CG *Right. So, [REDACTED]—.*

AH *Basically said that I've committed a crime and there was more around that but mostly around lying. Lying is a big deal as you know and the trust of the community is a big deal as well and this goes somewhat towards removing trust that the community might have in me. And I think that's where there was time to have this removed and that time has, it's sort of passed.*

CG *And that's from hearing you today that if Councillor Baldock had had said, 'Okay, alright, fair cop, I'll take that down,' from your perspective that would have been the end of the matter?*

AH *At the time all he had to do was take it down and say, 'Look it turns out he was using two phones and one wasn't LGOIMAable [sic], the work one was, nothing on it.' If he'd have said something like that early on, well so be it.*

CG *Yeah.*

AH *And of course remove the reference and said, you know, maybe even, 'Sorry that I suggested that it was a deliberate attempt to breach the Privacy Act,' or whatever the Public Records Act was, that would have been a simple solution.*

Cr Hollis confirmed that while he was not friends with Cr Baldock, he had a collegial relationship and was civil in his dealings with him.

AH *...collegial. We've agreed on a number of things in Council and disagreed on a number of things in Council. We've even been out as groups for drinks and had inane chit chat, nothing of consequence, no sharing of family history for example. But, you know, nice weather sort of stuff and that's – we've got a working—.*

- CG *It's a civil relationship...*
- AH *Yeah it is.*
- CG *...you won't avoid each other in a hallway?*
- AH *No, no, no we certainly won't, we'll sit next to each other in Chambers and we'll sit next to each other at lunch and there's no particular animosity at all. You know, even yesterday Councillor Baldock had a joke about today, changing the terms of the committee structure for adjudicating these and there's some times that we might need to get people who aren't Councillors to be on the Committee. And it was a wee joke, it certainly I don't think it affects our working relationship and neither should it because it's just a process.*
- You know, I mean I'm comfortable that with the passage of time, the public's perception of lying and breaking laws will lessen. And while I'd like to think that we have huge followings on Facebook that wait for our, every evening for our words to be written wisely into the ether, I think that's it not really as many people affected as, you know, what we might think. But it just, the general view of, of me having poor integrity was, is something that does need addressing.*
- CG *And so I think you've probably touched on my line of questioning there, so the wider community, and this information going out to, do you think that, just the reach is not as wide or as deep or as damaging potentially as—?*
- AH *The Bay of Plenty Times concerned me a lot more. That reaches about a hundred thousand people and if I've got my numbers right it's 70 or 100. But in the order of many tens of thousands. And it was a front page story and so that has touched a lot of people. I managed to I think, after talking with Sam Motion, to point out that there was some significant flaws in the comments and it hasn't been repeated significantly, certainly not on the front page which was good. But it was certainly front page news and I don't really need negative front page news, you know, I've got plenty of that.*
- CG *So, negative front page news, the Bay of Plenty was more significant than the Facebook page?*
- AH *Yeah I think so but the Facebook page is what triggered the Bay of Plenty Times and of course it then sent, you know, people to the, to Facebook. I haven't checked to see views or shares or, I haven't checked it's reach or anything like that, it's the point was there was a solution on Facebook, it wasn't taken.*

Cr Hollis outlined that he had made contact with Cr Baldock and offered a solution to address his concerns with the Facebook post. Also that Cr Baldock had asked him to prove a negative, i.e. prove that he hadn't deleted text messages.

- CG *It wasn't taken. And how did you make that initial contact with Councillor Baldock?*
- AH *Email.*
- CG *So, email, right.*
- AH *Yeah, there was an email string. Councillor Baldock asked me to prove that I hadn't deleted emails, well you can't prove a negative. So, I sent him to Bertrand Russell and asked him to read about the teapot which is the classic example. Bertrand Russell is, you probably know who is anyway but if you don't he's well worth a read, it's certainly a good wiki. I sent Larry to that. I also pointed out that we're not in a French system, that we are innocent until proven guilty so it's behoven [sic] on him to prove it, not on me to prove the negative. And I then asked him, 'So, what you're saying are you going to remove, retract?' He still said, 'No.'*
- CG *So, that's it, so and correct me again if I'm wrong so the reach initially with the Facebook page was less, less widespread and potentially less damaging?*
- AH *Probably about a thousand tops.*

CG *Tops, yeah but then once it was picked up by the Bay of Plenty Times, it then went on front page for between 70 and a hundred thousand people and then that's when Councillor Baldock has named you as the person he's referring to as the individual who he believes has deleted texts.*

AH *Yeah and I would also suggest that even though my name wasn't mentioned in the original text, it was well known through the thread.*

CG *The thread right, and had you been mentioned previously in the thread there?*

AH *No.*

CG *No, but it was implied it was you?*

AH *Yeah LGOIMA was clear, there was only two Councillors who got nil results. Myself and Jako Abrie. Jako too has a burner phone [laughs] as we've began calling them.*

CG *So, yeah so it's two male Councillors had...*

AH *Nil results.*

CG *...nil results...*

AH *And there's only one...*

CG *...for the search criteria.*

AH *...that Councillor Baldock's likely to throw into the public and that's a pretty easy leak to make.*

CG *Okay and so were all Councillors subject to the LGOIMA, to have their checked, phones checked or just the people who were party to the letter.*

AH *Not originally, originally there was just the party to the requisition letter but then there was a LGOIMA came in that asked roughly the same question for all 11...*

Cr Hollis provided comment on his view that the central issue for him was in relation to the LGOMIA process around digital and social media being addressed, which in his opinion has caused Cr Baldock to overstep the line.

CG *So, look and you've touched on it a couple of points there that, so that this, you know, the comment it had been back and forth between you and Councillor Baldock, not a problem, you've got a thick enough skin and been around long enough to not take that personally...*

AH *Mmm.*

CG *...for you the issue has arisen because this has now crossed that, the boundary and it's gone into the public domain...*

AH *Yeah.*

CG *...where, so the inference made there by, I'm looking at [REDACTED] here saying, you know, this is a breach of Public Records Act and that, you know, not to mention misconduct where you believe that that then inferences has tarnished your integrity and trustworthiness in the public eye*

AH *That's right. You know, and that's probably the issue in this case. I would hope that Councillor Baldock doesn't get asked to resign as one of the penalties, I think it's not serious enough for that and as part of it I would like to see the process behind LGOIMA and social or digital media addressed and I think that that, if he just comes to the point where even just his apology would be fine, I don't take much stock of forced apology, I don't think it matters. But it's really to get this properly dealt with and when I say dealt with properly, I don't mean the Councillor Baldock thing but the overarching process of the LGOIMA that has now led to Councillor Baldock crossing that line, I feel that it's a very strong line, very firm line, like*

impuning integrity is a big deal but I can see why it's occurred because it's blurred, like all of that stuff suddenly got all blurry and it's, it needs to not be blurry, it needs to be very crisp and I think it should be.

CG Okay.

AH *And that's the reason why I use this for certain purposes. It's not for, I don't want public reading it. It's my personal thoughts and I choose to share that how I choose to share that, that's—.*

CG *And you have control over that.*

AH Yep.

CG *And it's quite clear in your mind, the lines aren't blurry there, that's your personal, and just for the recording, pointing at your personal phone there...*

AH *Sorry pointing at my personal phone.*

CG *...so your phone.*

AH *My personal phone I use to make personal calls and not Council related calls, Council business.*

CG *Thank you. Now that gives me a good sort of background to where it started. You've got a collegial working relationship with Councillor Baldock so there's not a situation where you can't be in the same room...*

AH No.

CG *...anything like that. You agree on some things, you disagree on other things, which is what you'd expect.*

AH *You'd hope.*

CG *And challenging the status quo and so this is has arisen from a Facebook thread that's been forwarded to you and wasn't till the point where it crossed the line there and it was [REDACTED] and I'm referring specifically to [REDACTED] comments about, you know, breaching the Public Records Act and not to mention misconduct where you then believed that it had crossed the line into affecting your trust worthiness and credibility in the public arena and that's when – there's an email trail which you'll send to me which you had with Councillor Baldock to try...*

AH *That's right.*

CG *...and address it at an early stage and Councillor Baldock's declined to even meet with you and has said no in an email trail that he wouldn't entertain that.*

AH *And I'll send those to you shortly.*

CG *Great, thank you. Is there anything we haven't touched on that you think I should be aware of?*

AH *I don't think so, I think that's pretty, yeah we think we touched all the salient points. Yeah I think so.*

Cr Larry Baldock (the Respondent)

Cr Baldock provided a prepared statement (attached as [appendix d and e](#))

Cr Baldock's response,

The Complainant in support of his complaint refers to a Facebook message of around 1 August (attached document 1) and a newspaper article in the Bay of Plenty Times of Saturday 1 August.

This article was not produced and I can find no reference of anything relating to the subject in the BOP Times on Aug 1st

The Aug 5th (attached document 2) article in the Bay of Plenty Times in my opinion disclosed no breach of 5.1 of the Code of Conduct.

The Code of Conduct was adopted on 14 July 2020 for the purposes of managing and sanctioning Elected Member behaviour. The Code of Conduct is general in what actual conduct or behaviour would constitute a breach of the behaviour code. The Code of Conduct must be interpreted on the basis that it is not intended to restrict or muzzle free speech. Value 9 of the Code of Conduct reinforces that position.

The Code of Conduct cannot contravene the New Zealand Bill of Rights Act 1990. Section 13 reserves the right to "freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference."

The Defamation Act 1992 and the law surrounding defamation are also clear that "fair comment" is a defence in an accusation of defamatory behaviour and "truth" an absolute defence.

To suggest the Code of Conduct somehow modifies the rights and privileges of an ordinary citizen once they are an Elected Member cannot be seen as credible interpretation. The Code of Conduct must be read against these rights and the law.

I do not believe any breach of the Code of Conduct occurred.

Cr Baldock confirmed by email that he had amended the Facebook post to read that he was making "some enquiries with the offices of the Ombudsman and Chief Archivist." (attached as appendix f).

Though I had not named the Complainant, at the request of the Chief Executive Marty Grenfell I made amendments to the post when I was made aware of Cr Hollis concern. This was not because I believed in any way that I had breached the Code of Conduct but simply out of respect for our Chief Executive and the ongoing difficulties between Elected Members.

Cr Baldock has outlined the basis for his scepticism of the reported absence of text messages on Cr Hollis's phone.

Attached are copies of some of the text messages that were released in the LGOIMA (documents 3, 4 & 5). These are the text files from the phones of Cr Robson, Cr Morris and Cr Clout. They were no text files from the Complainant's Council phone.

The Complainant's Council phone was surrendered to Council staff and yet following the search criteria applied to other surrendered phones, texts were not apparently discovered on the Complainant's phone.

How can this possibly be?

No explanation has been forthcoming from the Complainant as to how that could possibly occurred.

Cr Baldock provided his summary in relation to the complaint.

In summary I submit as follows:

1. *That the assessment that the complaint was "material" and worthy of an investigation cannot be made out on even a cursory view of the information available.*

2. *That the Code of Conduct should not be used as a political tool to restrict the ability to speak freely or question Councillors conduct irrespective of its embarrassing nature. It is to manage behaviours not muzzle fair and proper public information.*
3. *In balance with my other obligations as an elected member, I did not publicly disrespect the Complainant.*
4. *The Complainant may well have been embarrassed or annoyed but I believe given the surrounding evidence available that it was a reasonable conclusion that texts may well have been deleted (or deliberately withheld).*
5. *There was no defamation the "facts speak for themselves". Texts disclosed by other Councillors from their phones from the Complainant were not on the Complainant's Council phone. My comments are either true or at worst fair comment.*
6. *This is not a minor matter and the seriousness with which the offices of the Ombudsman and Chief Archivists are treating the matter bears this out.*

5. Feedback to draft report

A draft copy of this investigation report was provided to Cr Baldock and Cr Hollis for review and feedback prior to being finalised.

Cr Hollis did not provide any further feedback or comment on the draft report for consideration.

Cr Baldock provided feedback which is attached as ([appendix g](#)) and available for full review if required, the feedback that was provided was considered, after consideration there was no new information which in my view changed the findings reached in the draft report.

Cr Baldock commented on an opinion or view that was expressed regarding potential political agendas in various media. Cr Baldock stated that he believed this was outside the Terms of Reference and requested that the comments were deleted or amended.

I have considered Cr Baldock's view, however believe that as an external and independent observer my observations and inferences drawn during this investigation into a breach of the TCC Code of Conduct require to be read in the context of the situation in which the breach was alleged.

It was my view that elected members of the TCC should be cognisant of the potential drivers and potential consequences of actions when viewed through the Code of Conduct lens.

As I have not relied on this view to arrive at my findings, members of TCC may consider the comments and apply their own weight to the validity of the commentary provided.

6. Summary and Analysis of complaint

The nature of the complaint and supporting material provided is centred on comments made in a Facebook post by Cr Baldock on 1 August 2020, that did not directly identify Cr Hollis. Cr Baldock has however subsequently confirmed to media on 5 August 2020 that he was in fact referring to Cr Hollis.

At this stage I am pursuing some enquiries with the Offices of the Ombudsman and Chief Archivist in regard to what seems to be the deliberate attempt by one Councillor to avoid scrutiny by deleting all txts from his phone prior to handing it in to staff. I shall update you more on this later.

Cr Hollis has then provided a response to Cr Baldock's comments, also in the media, addressing his position in relation to the views stated by Cr Baldock.

Cr Hollis's code of conduct complaint claims the Facebook post was "*publicly disrespecting and perhaps defaming his integrity*"

The Facebook post provided as part of the complaint does not name or identify Cr Hollis, therefore I do not believe that it is possible to find that the comments in the post were intended to be publicly disrespectful of Cr Hollis, nor could they therefore be perceived in that way by any persons who viewed the communication.

Cr Hollis has confirmed that he was not named in any of the earlier Facebook threads prior to the post provided and the document that is the focus of the complaint.

AH *Yeah and I would also suggest that even though my name wasn't mentioned in the original text, it was well known through the thread.*

CG *The thread right, and had you been mentioned previously in the thread there?*

AH *No.*

The post by Cr Baldock refers to "*his phone*" indicating a male councillor, however as there was more than one male councillor other than Cr Hollis who supplied phones for examination, this does not definitively identify Cr Hollis.

The publicly released LGOMIA information established that only two Councillors were identified as having no text messages located per the search criteria, and they were Cr Hollis and Cr Arbrie .

While I accept that it is possible an inference could be drawn by an observer of TCC politics that it was referring to Cr Hollis, the post in question is not supported by any other descriptive language or references which in my view would put that inference beyond doubt in clearly identifying Cr Hollis.

Applying the reasonable person test, I did not view any of the language used in the Facebook post provided as language that would, or indeed could, be viewed by an impartial or reasonable person as manifestly disrespectful.

While Cr Baldock has subsequently confirmed to media enquiries that he was referring to Cr Hollis in his Facebook post, there is an argument to be made that he was in fact being honest in responding to a question in relation to the comments he has made.

This was Cr Baldock's written submission in response to the complaint, that he had provided a truthful answer to a question posed by the reporter when asked if he was referring to Cr Hollis.

In regard to the allegation of "perhaps defaming" Cr Hollis's integrity, the content of the Facebook post supplied would appear to support a view that Cr Baldock's comment is based on his genuine belief of the circumstances as he sees them. I am persuaded of this fact by the context which describes that he is "*pursuing enquiries*" and "*in regards to what seems to be the deliberate attempt*".

It is my view that Cr Baldock has, by these words, qualified that the behaviour he has referenced "*seems*" to be, rather than claiming it "*has*" occurred as a matter of fact.

Cr Baldock has provided copies of text messages purportedly sent by Cr Hollis and released from other Councillors cell phone records as part of the LGOMIA request for information. These records were provided with his written response and would at face value support Cr Baldock's view or assertion regarding an apparent anomaly.

The anomaly being, that if no text messages were located on Cr Hollis's phone how could they then appear on other Councillors records.

From Cr Baldock's written response, he clearly believes that it is because they have been deleted or withheld.

I accept that Cr Hollis believes that his integrity as an elected member is being questioned, he has mentioned potentially defamatory remarks. A defence for any defamation claim is one of truthfully believing in what has been said, regardless of whether you are factually incorrect or mistaken in your belief.

However the complaint made is that of a breach of the Code of Conduct, therefore while Cr Hollis references possibly defamatory remarks he is not complaining of defamation per se.

Whether or not Cr Hollis has deleted text messages, or the reason why they have not been identified when examined during the LGOMIA process, falls outside the terms of reference for this complaint.

I have validated that Cr Baldock has indeed pursued a review by the Department of Internal Affairs (DIA) regarding his belief that text messages have been deleted from Cr Hollis's phone prior to a LGOMIA review of Cr Hollis's TCC phone being undertaken.

Having been directed to the Bay of Plenty Times article on 5 August 2020 as part of the written complaint, this article that confirms Cr Baldock was referring to Cr Hollis in his Facebook post and which also records Cr Hollis's response. This article has provided an avenue to obtain a wider context with which to assess any potential adverse effects of the complaint that has been made.

Cr Hollis has confirmed that the Facebook post in and of itself, with a limited public circulation, did not overly concern him in regard to the potential damage to his personal integrity and standing within the community, however the BOP Times article with a readership of between 70,000 to 100,000 people was of a significant concern to him.

When reviewing the complaint and with the benefit of the context within which the comments have been made, there is an argument that Cr Baldock, when confirming to journalist Samantha Motion that he was referring to Cr Hollis with his Facebook post, has brought the council or a councillor into disrepute by his allegation of an integrity breach by an elected official, due to the public reach of the main stream media.

To put that in context, the allegation made by Cr Baldock when naming Cr Hollis, is at the date of this report, an as of yet untested allegation that infers Cr Hollis has deleted text messages to somehow subvert a LOGIMA request.

By then applying that position as a justification for a breach of the TCC Code of Conduct, it would potentially and at face value appear to be a position that was at odds with the TCC Code of Conduct values of; ethical behaviour, duty to uphold the law, free speech, and conducting business with transparency as put forward by Cr Baldock in defence of his comments.

3. Values

The Code is designed to give effect to the following values:

- 1. **Public interest:** members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.*
- 2. **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner;*
- 3. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality and integrity of officials;*
- 4. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.*
- 5. **Respect for others:** members will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.*
- 6. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public.*
- 7. **Equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.*
- 8. **Leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.¹*
- 9. **Free speech:** members will respect the diversity of thought and opinion that are part of a healthy democracy.*
- 10. **Transparency:** members will conduct the business of Council in an open, transparent and democratically accountable manner.*

So by applying the values of the TCC, Cr Baldock has chosen to confirm to the media who it was that he was referring to, rather than maintain a neutral position until he had evidence or proof to support his belief that Cr Hollis had deleted text message to avoid scrutiny during a LAGOMIA request. This would include a definitive response from the DIA on the matter.

This decision by Cr Baldock is at odds with his earlier amendment to a Facebook page post which removed any reference to Councillors and something which he stated he did out of respect for the Chief Executive Marty Grenfell, and not because he believed that he had breached the Code of Conduct.

Cr Hollis has referenced the fact that Cr Baldock has asked him to prove that he didn't delete any text messages or prove a negative, something which Cr Hollis has publicly stated that he did not do.

Had Cr Baldock maintained a neutral position when contacted by media i.e. neither confirm nor deny, it is my view that it is unlikely that this complaint would have occurred, nor would the issue have been able to gain the media space subsequently afforded to the issue.

Retaining a neutral position until any evidence or new information became available, in my view, would have been in alignment with the TCC Code of Conduct principles.

I have reached that view based on the position that when examining any "Code of Conduct", it is fundamentally an agreement between a subset of people, and specifically it is an agreement on the way and manner with which they will interact with each other and others outside that group.

Cr Baldock has stated in his written response that the Code of Conduct does not supersede the Bill of Rights.

The Code of Conduct cannot contravene the New Zealand Bill of Rights Act 1990. Section 13 reserves the right to "freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference."

That is correct, however we are not examining a breach of the Bill of Rights, the complaint is about a breach of an agreed Code of Conduct amongst the elected members of TCC.

Cr Baldock has also referenced his ability to engage in free speech, in support of the comments he has made.

Free speech: *members will respect the diversity of thought and opinion that are part of a healthy democracy*

It is my view that Cr Baldock, by naming Cr Hollis publicly and stating his view of an, as yet untested allegation, has crossed over a line regarding the diversity of thought and opinion or indeed the ability to have a robust discussion and agree to disagree amongst the people who signed up to the TCC Code of Conduct.

Crossing the line in my view, from the ability to engage in free speech to that of an accusation against a fellow Councillor, is an allegation which implies dishonesty or diminished integrity on behalf of that Councillor.

Cr Baldock has claimed that he provided an honest answer to a question when asked by the media who he was referring to. Again, yes, this position is truthful, as supported by Cr Baldock's explanation of how he has arrived at that view.

So while it is accepted that Cr Baldock has exercised his free speech, and provided an honest answer to a direct question, he has also alleged that a fellow Councillor has acted improperly by deleting text messages. Cr Baldock genuinely believes this to be the case and that is his honest belief defence, for any possible defamation proceedings.

However when tested against the principles and intent of a Code of Conduct, in this particular set of circumstances, by identifying Cr Hollis as a person who he suspects of acting in a dishonest manner, and in the absence of any definitive proof to support that position, it is my view that Cr Baldock has breached the TCC Code of Conduct. Namely; Section 5.1 Relationships between members, by virtue of the actions he has taken that reduce the public confidence in another member, also by not showing Cr Hollis the courtesy of waiting for any investigation outcome prior to making the allegations public.

5. Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public. Any failure by a member to comply with the provisions of this section can represent a breach of the Code.

5.1 Relationships between members

Given the importance of relationships to the effective performance of the Council, members will conduct their dealings with each other in a manner that: _

Maintains public confidence; _ _

- is open honest and courteous ; _ _*
- Is focused on issues rather than personalities;*
- Avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and*
- Avoids aggressive, bullying or offensive conduct, including the use of disrespectful or malicious language.*

Please note, nothing in this section of the Code is intended to limit robust debate.

This report or any analysis would not be complete without referencing the fact that the media, whether social media or mainstream channels, are being actively used to facilitate a public airing of differences between Councillors.

It is my view as an external observer that while the motivation to do so publicly would appear to be about upholding principles and holding individuals to account, the reality and true driver more likely lies with political agendas and as such these agenda's ultimately come at the expense of the trust and confidence the people of Tauranga can expect from the elected members of TCC.

7. Conclusion

Applying the remarks identified by Cr Hollis to the TCC Code of Conduct:

"At this stage I am pursuing some enquiries with the Offices of the Ombudsman and Chief Archivist in regard to what seems to be deliberate attempt by one Councillor to avoid scrutiny by deleting all txts from his phone prior to handing it in to staff. I shall update you more on this later."

I find the comments identified by Cr Hollis in the Facebook post by Cr Baldock and supplied as the initial basis for his complaint, do not constitute a breach of the TCC Code of Conduct and I find that the complaint related to the Facebook post is not substantiated.

When considering the Bay of Plenty Times article on 5 August 2020 provided in support of the complaint by Cr Hollis, it is my view that the competing tension of the TCC Code of Conduct and its stated values of ethical behaviour and free speech while acting in a transparent manner do not outweigh the possible negative effect on the council and the potential effects on Cr Hollis.

I believe, at the point Cr Baldock chose to name Cr Hollis in the media in relation to alleged, rather than proven behaviours, a breach of the TCC Code of Conduct has occurred and I find that the complaint is substantiated.

"Baldock posted on Facebook this morning that he was making inquiries with the Offices of the Ombudsman and Chief Archivist in regard to what, in his opinion, seemed to be a "deliberate attempt by one Councillor to avoid scrutiny by deleting all txts from his phone prior to handing it in to staff."

"Baldock confirmed to the Bay of Plenty Times he was referring to Hollis". (Article by Samantha Motion, BOP Times 5 August 2020)

Regarding the seriousness of the breach of the TCC Code of Conduct, my assessment is that any real or perceived disrespect or impact on the status of Cr Hollis's integrity would be offset and neutralised in regards to any potential adverse effects by the publicised animosity that exists between the two councillors, and current disharmony previously reported amongst the wider group of elected members of council.

Therefore I am of the view that the seriousness of the breach is at the lower end of the scale.

While finding that the complaint of a breach of the TCC Code of Conduct is substantiated, it is not intended in any way to diminish the view or position held by Cr Baldock regarding the anomaly he has raised, or his ability to do so.



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